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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

SCHWADRON, R

ART UNIT

PAPER NUMBER

8

DEHLINGER & ASSOCIATES
PO BOX 60850
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18N1/1024

1816

DATE MAILED:

10/24/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been ^{restricted} examined ☒ Responsive to communication filed on 8/21/95 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 6 month(s), 30 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-19 are pending in the application.

Of the above, claims 17-19 are withdrawn from consideration.

2. ☐ Claims have been cancelled.

3. ☐ Claims are allowed.

4. ☐ Claims are rejected.

5. ☐ Claims are objected to.

6. ☒ Claims 1-16 are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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15. With regards to the invention elected in the amendment received 8/21/95 (Group I, claims 1-16), the following election of species is required.

16. This application contains claims directed to the following patentably distinct species of the claimed invention:

A) a method for detecting the localization of tumor cells (claim 4)

B) a method for detecting the localization of inflammation (claim 5)

C) a method for detecting the localization of a pathogen (claims 6,9,10)

D) a method for detecting the localization of a thrombotic plaque (claim 7).

These species are distinct because they involve the use of different conjugates to detect different pathologic entities.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3,8,11-15 are generic.

17. This application contains claims directed to the following patentably distinct species of the claimed invention:

A) a conjugate that is a fusion protein (claim 13)

B) a transformed cell (claims 14,15).

These species are distinct because one method involves the administration of a fusion protein, while the other method involves the administration of a transformed cell.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims

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shall be restricted if no generic claim is finally held to be allowable. Currently, claims 11 and 12 are generic.

18. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).


Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

18. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

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19. Papers related to this application may be submitted to Group 180 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Papers should be faxed to Group 180 at (703) 305-7401.

20. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Tuesday through Friday from 8:30 to 6:00. The examiner can also be reached on alternative Mondays. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Mr David Lacey can be reached on (703) 308-3535. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 180 receptionist whose telephone number is (703) 308-0196.


RONALD B. SCHW.
PATENT EXAMINER
GROUP 1800

Ron Schwadron, Ph.D.

Patent Examiner

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October 18, 1995

167-703-308-0196